

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TYRONE RICHARD WATKINS,

Crim. Case No. 10-CR-20545

Petitioner,

-vs-

Hon. AVERN COHN

UNITED STATES OF AMERICA,

Respondent.

**RESPONSE TO MOTION TO VACATE SENTENCE
PURSUANT TO 28 U.S.C. § 2255**

The United States of America, through its undersigned counsel, respectfully requests the Court to deny Petitioner Watkins's Motion to Vacate Sentence Pursuant to 28 U.S.C. § 2255. In support of this response, the government submits the attached brief.

Respectfully submitted,

BARBARA L. McQUADE
United States Attorney

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Dated: January 13, 2014

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**BRIEF IN SUPPORT OF RESPONSE TO
MOTION TO VACATE SENTENCE**

On May 2, 2011, the Court accepted Watkins's guilty plea pursuant to a Rule 11 plea agreement to five counts of bank robbery, and one count of using a firearm during and in relation to a crime of violence. (R. 18: Plea Agreement). As part of the agreement, the parties stipulated to a sentence of 240 months imprisonment, rather than the 107-year mandatory minimum sentence to which Watkins was exposed under his indictment. (*See id.*; R:12: Acknowledgment of Ind.) The Court imposed sentence on October 31, 2011. (R. 21: Judgment). Watkins then appealed his conviction and sentence which the Court of Appeals later denied on September 12,

2012. (R. 27: Order, U.S. Court of Appeals). On December 23, 2012, Petitioner filed this motion for relief under 28 U.S.C. Section 2255. (R. 28: Motion to Vacate Sentence).

LAW AND ARGUMENT

I. WATKINS'S MOTION TO VACATE SENTENCE IS BARRED BY THE ONE YEAR STATUTE OF LIMITATIONS IN 28 U.S.C. § 2255.

For motions filed under § 2255, defendants have one year in which to seek relief. *See 28 U.S.C. § 2255(f)*. The one year period starts to run from the date on which the judgment becomes final. *Id.* A judgment becomes final on the date the Supreme Court affirms the petitioner's conviction or denies a petition for *certiorari* or when the time for filing a petition for *certiorari* expires. *See Clay v. U.S.*, 537 U.S. 522, 525 (2003). For defendants who have perfected an appeal, the one-year clock begins to run with the expiration of the 90-day *certiorari* period. *Id.*

Watkins did not petition the Supreme Court for a writ of *certiorari*, therefore his one year period commenced when his *certiorari* period expired on December 11, 2012-- 90 days after the 6th Circuit's September 12, 2012 mandate. (R. 27: Order from U.S. Court of Appeals). Watkins failed to file his § 2255 until December 23, 2012 – nearly two weeks after his judgment of sentence became final. Watkins's filing of this petition is therefore time-barred and must be denied.

WHEREFORE, for the reasons set forth above, the United States respectfully

moves this honorable court to deny Petitioner's motion.

Respectfully submitted,

BARBARA L. McQUADE
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CERTIFICATE OF SERVICE

I hereby certify that on, January 13, 2014, I electronically filed the foregoing paper, RESPONSE TO MOTION TO VACATE SENTENCE with the Clerk of the Court using the ECF system.

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